IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH P. FERET, JAMES CLOUD, IRINA LEYDERMAN, on Behalf of Themselves and All Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	
CORESTATES FINANCIAL CORP., Its Employee Pension and Welfare Benefit Plans, and the Fiduciaries and Administrators of Each, Defendants.	:	No. 97-6759

MEMORANDUM AND ORDER

Yohn, J. July , 1998

Joseph P. Feret, James Cloud, and Irina Leyderman bring this action on behalf of themselves and all similarly situated persons against CoreStates Financial Corp., its employee pension and welfare benefit plans, and the fiduciaries and administrators of each plan.[1] In their ten count complaint, plaintiffs seek relief for interference with their attainment of benefits in violation of § 510 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140 (Count I); breach of fiduciary duty in violation of §§

[1] According to plaintiffs, CoreStates maintains the following compensation and benefit plans: Severance Plan, Medical Plan, Dental Plan, Term and Dependent Life Insurance Plans, Group Universal Life Insurance Plan, Personal Accident Insurance Plan, Short-Term and Long-Term Disability Plans, Benefit Bank Account Plan, Employee Stock Ownership and Savings Plan, Long-Term Incentive Plan, and Retirement Plan. See Complaint ¶ 13.

404, 405, and 502(a)(3) of ERISA, 29 U.S.C. §§ 1104, 1105, and 1132(a)(3) (Count II); failure to provide benefits in violation of § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B) (Count III); denial of benefits in violation of the Pennsylvania Wage Payment and Collection Law ("WPCL"), 43 PA. CONS. STAT. § 260.1, et seq. (1992 & Supp. 1997) (Count IV); breach of contract (Count V); equitable estoppel (Count VI); violations of § 10(b) of the Security Exchange Act of 1934 and Securities Exchange Commission Rule 10b-5 (Count VII); violations of § 1-401 and § 1-501(a) of the Pennsylvania Securities Act, 70 PA. STAT. ANN. §§ 1-401, 1-501(a) (Count VIII); fraud (Count IX); and negligent misrepresentation (Count X).

Defendants have moved to dismiss Counts I, II, IV, V, VI, VII, VIII, IX, and X, and to stay Count III. For the reasons stated below, defendants' motion will be denied in part and granted in part. Specifically, the court will grant defendants' motion to dismiss with respect to plaintiffs' second and third claims in Count I (alleging that CoreStates violated § 510 by amending its severance plan and by rehiring plaintiffs into non-benefit positions); all claims in Count II; all claims concerning ERISA benefits in Counts IV and V; and all claims in Count VI.[2] The court will deny defendants' motion with respect to all other claims.

I. Background

In March 1997, CoreStates announced to its employees that it was broadening

[2] Plaintiffs' fiduciary misrepresentation claim in Count II will, however, be dismissed without prejudice.

its relationship with Andersen Consulting ("Andersen") into a long-term contract whereby Andersen would manage CoreStates' Systems and Technology Group functions. See Complaint, Prelim. St., at 1; ¶ 29. In a written communication, Terrence A. Larsen (then Chairman of the Board and Chief Executive Officer of CoreStates) and Rosemary B. Greco (then President of CoreStates) assured employees that "[t]his means that people whose jobs are affected will receive benefits according to the CoreStates severance policy." Complaint ¶ 30; Exhibit B to Complaint.

In response to employee inquiries about the applicable severance pay document, Debra Ricci of the CoreStates Human Resources Department informed class members that the applicable document was on-line. On April 25, 1997, she informed class members via the company-wide e-mail system ("TOSS") that "[t]he policy that is online (the HR Policy Manual on TOSS) is correct and in place (has been since 9/96) . . . . [T]he severance policy in place (the one online) is up to date." Complaint ¶ 40; Exhibit D to Complaint.

On May 20, 1997, Ricci informed employees via another company-wide e-mail, "I have not received any directives to change anything in the severance policy that is online, so that is the policy as it stands right now." Complaint ¶ 40; Exhibit E to Complaint. In response to further requests for the current severance plan, she wrote on June 2, 1997 that "[t]he current severance plan is what you see online--the severance pay policy." Complaint ¶ 40; Exhibit G to Complaint.[3]

---

[3] The on-line severance policy provided, in relevant part:

> Offers of severance will be made at CoreStates' discretion. Generally, severance will be offered to employees whose position is [sic] eliminated and to whom a comparable position is not offered.

Plaintiffs allege that, in June 1997--at the same time that Ricci was representing to employees that the current severance policy was on-line--CoreStates amended the policy and made it effective retroactively to September of 1996. See Complaint ¶ 42; Prelim. St., at 2. Under the amended policy, employees who are involuntary terminated but who receive offers of "comparable" employment are not eligible for severance benefits. See id. ¶ 43. Plaintiffs allege that they were not given any notice that the plan was being retroactively amended. See id. ¶ 44.

On August 26, 1997, Andersen extended to plaintiffs offers of employment that were contingent upon the signing of the contract between CoreStates and Andersen. See id. ¶ 32; Exhibit C to Complaint. In September, the two companies entered into the contract and, on November 1, 1997, Andersen assumed responsibility for certain CoreStates' technology and operations functions. See id. Prelim. St., at 2. At the end of the business day on October 31, 1997, approximately 200 employees of CoreStates' Systems and Technology Group were terminated and transferred to the payroll of Andersen. See id. at 1. Plaintiffs allege that these employees had no break in service. That is, they left work on October 31, 1997 as employees of CoreStates and returned as nominal Andersen employees the next business day, November 3, 1997. See id. ¶¶

> An employee who receives a comparable offer from CoreStates at any time prior to exiting CoreStates becomes ineligible for severance (regardless of whether or not the offer is accepted.) Generally, CoreStates will NOT pay severance for voluntary termination, terminations by mutual agreement, performance related terminations, terminations due to cause or to employees whose current position is [sic] downgraded. CoreStates management, in consultation with Human Resources, retains the discretion to determine whether a change in position constitutes a down-graded position or a non-comparable offer.

Exhibit G to Complaint, at 1-2.

1, 4, 7, 10, 35. They allege that, as Andersen employees, they continue to do the same work that they did as CoreStates employees. See id. ¶¶ 30, 35.

Plaintiffs allege that they have been irrevocably harmed by their forced transfer to Andersen. Specifically, plaintiffs allege that CoreStates has notified them that they are no longer eligible to participate in or accrue or receive benefits pursuant to CoreStates employee benefit plans, including the CoreStates Severance Policy, Flex Plan and its Medical Plan, Dental Plan, Term and Dependent Life Insurance Plans, Group Universal Life Insurance Plan, Personal Accident Insurance Plan, Short-Term and Long-Term Disability Plans, Benefit Bank Account Plan, Employee Stock Ownership and Savings Plan ("ESOSP"), Long-Term Incentive Plan ("LTIP"), and Retirement Plan. See id. ¶ 11; Exhibit A to Complaint. In addition, plaintiffs allege that, contrary to its March 1997 representations, CoreStates has announced that it will not provide severance benefits to them because they have been offered "comparable employment," as that term is defined in the amended severance plan. See id. Prelim. St., at 2; ¶ 39. Plaintiffs further allege that they are ineligible for all "non-plan incidents of employment by CoreStates, including, without limitation, wages, bonuses, stock payments, short-term disability, personal days, vacation, holidays, jury duty, funeral leave, and tuition reimbursement . . . ." Id.

II. Standard of Review

In ruling on a motion to dismiss for failure to state a claim upon which relief can be granted, the court must accept as true all well-pleaded allegations of fact in the plaintiff's complaint and must determine whether "under any reasonable reading of the

pleadings, the plaintiff may be entitled to relief." Colburn v. Upper Darby Township, 838 F.2d 663, 665-66 (3d Cir. 1988), cert. denied, 489 U.S. 1065 (1989) (citations omitted). Although the court must construe the complaint in a light most favorable to the plaintiff, it need not accept as true legal conclusions or unwarranted factual inferences. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). If "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief," the complaint will be dismissed. See Conley, 355 U.S. at 45.

III. Discussion

A. Count I

Count I asserts a claim on behalf of the entire employee class against CoreStates for interference with benefits in violation of § 510 of ERISA, 29 U.S.C. § 1140. See Complaint ¶¶ 69-72.[4] In order to prevail under this section, plaintiffs must show: "(1) prohibited employer conduct; (2) taken for the purpose of interfering; (3) with the attainment of any right to which the employee may become entitled." Dewitt v. Penn-Del Directory Corp., 106 F.3d 514, 522 (3d Cir. 1997).

Plaintiffs allege that CoreStates violated § 510 in three ways. First, plaintiffs

---

[4] This section provides, in relevant part:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. § 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act.

29 U.S.C. § 1140.

allege that CoreStates entered into an alliance with Andersen and terminated class members pursuant to that alliance with the intent of interfering with class members' employee pension and welfare benefit plans. See Complaint ¶ 70. Second, plaintiffs allege that CoreStates amended its severance plan with the intent of interfering with plaintiffs' benefits. See id. ¶ 72. Third, plaintiffs allege that CoreStates rehired its employees to nominally non-employee positions with the intent of interfering with their benefits. See id. ¶ 72.

Defendants argue that plaintiffs' second and third claims should be dismissed because amending welfare benefit plans and "rehiring" employees do not give rise to causes of action under § 510. See Defs' Mem. at 7-9.

1. Severance Plan Amendment

Defendants cite Haberern v. Kaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan, 24 F.3d 1491 (3d Cir. 1993), cert. denied, 115 S. Ct. 1099 (1995), for the proposition that severance plan amendments do not give rise to a cause of action under § 510. In Haberern, the district court held that the plaintiff's employer violated § 510 when it amended its defined benefit plan to eliminate the plaintiff's life insurance coverage while simultaneously increasing life insurance coverage for other beneficiaries. See id. at 1502-04. The Third Circuit, however, reversed the ruling of the district court, explaining that the term "discriminate" in § 510 "should be limited to actions affecting the employer-employee relationship . . . ." Id. at 1503. Because the amendment affected only the terms of the benefit plan, and did not affect the plaintiff's employment, the court concluded that there was no violation of § 510. See id. at 1504;

see also Fischer v. Philadelphia Electric Co., 96 F.3d 1533, 1543 (3d Cir. 1996) (reversing the lower court's ruling that PECO violated § 510 because PECO's early retirement offer changed only the benefit level of its pension plan and did not alter PECO's relationship with its retirees).

Under Haberern, plaintiffs' second claim in Count I fails. When CoreStates amended its severance plan, it changed only the level of severance benefits and did not alter its relationship with its employees. For this reason, the court will grant defendants' motion to dismiss this claim.

2. Rehiring Employees into Non-Benefit Positions

Defendants argue that the court should dismiss plaintiffs' third claim in Count I because "rehiring" employees is not prohibited by § 510. See Defs' Mem. at 9-10. Plaintiffs respond that CoreStates' failure to hire plaintiffs into positions in which they would be eligible for benefits constitutes "discrimination" within the meaning of this section. See Pls' Reply Mem. at 7.

Section 510 was designed primarily to prevent "unscrupulous employers from discharging or harassing their employees in order to keep them from obtaining vested pension rights." Gavalik, 812 F.2d at 851 (citation omitted). A "fundamental prerequisite to a Section 510 action is an allegation that the employer-employee relationship . . . was changed in some discriminatory or wrongful way." Stout v. Bethlehem Steel Corp., 957 F. Supp. 673, 694 (E.D. Pa. 1997) (quoting Deeming v. American Standard, Inc., 905 F.2d 1124, 1127 (7th Cir. 1990)). Offering a job or the chance to continue employment has never been prohibited employer conduct and "it

would be a ludicrous distortion of ERISA to make it so." Stout, 957 F. Supp. at 694. The court finds that CoreStates' act of rehiring plaintiffs to non-benefit positions is not actionable under § 510. For this reason, the court will grant defendants' motion to dismiss this claim.

B. Count II

Count II asserts a claim on behalf of the entire employee class against CoreStates and all other fiduciaries and administrators for breach of fiduciary duties in violation of §§ 404, 405, and 502(a)(3) of ERISA, 29 U.S.C. §§ 1104, 1105, 1132(a)(3), and in violation of common law. See Complaint ¶¶ 73-74.[5] Plaintiffs allege that "[b]y

---

[5] Section 404 provides, in relevant part:

> (a)(1) Subject to sections 1103(c) and (d), 1342, and 1344 of this title, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and --
>
> > (A) . . . .
> >
> > (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . .

29 U.S.C. § 1104.

Section 405 provides, in relevant part:

> (a) In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> > (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
> >
> > (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
> >
> > (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the

. . . excluding employee class members from its severance benefits and from employee pension and welfare benefit plans in which those individuals properly were participants and beneficiaries and misinterpreting the terms of the relevant and operative Plans, defendant CoreStates and the other fiduciaries and administrators breached their fiduciary duties under ERISA to act in the interest of participants and beneficiaries . . . ." Complaint ¶ 74.

1. Misinterpretation of Plans

Plaintiffs contend that defendants breached their fiduciary duties by interpreting the terms of the severance plan so as to give effect to a provision that violates ERISA. See Pls' Mem. at 14. Specifically, plaintiffs argue that it was a breach of fiduciary duty for defendants to "enforce the amendment of the severance plan, inasmuch as the plan was amended in violation of ERISA [i.e. in violation of § 510]." Id.

Defendants argue that plaintiffs' misinterpretation claim should be dismissed because such a claim is actionable only as a claim for benefits under § 502(a)(1)(B), as pleaded in Count III. See Defs' Mem. at 13-14. Defendants argue that the Supreme Court's ruling in Varity Corp. v. Howe, 116 S. Ct. 1065, 1079 (1996), bars plaintiffs from

---

breach.
29 U.S.C. § 1105.

Section 502(a)(3) provides:

(a) A civil action may be brought --

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (I) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan[.]

29 U.S.C. § 1132(a)(3).

"pursuing the same claim under two sections of ERISA, once as a claim for benefits and once as a claim for breach of fiduciary duty." Defs' Mem. at 13.

In Varity, the Supreme Court held that § 502(a)(3) authorizes lawsuits for individualized equitable relief for breach of fiduciary obligations. See id. at 1075-79. However, the court cautioned: "[W]e should expect that where Congress elsewhere provided adequate relief for a beneficiary's injury, there will likely be no need for further equitable relief, in which case such relief [i.e. that available under § 502(a)(3)] normally would not be 'appropriate.'" Varity, 116 S. Ct. at 1079. The court concluded that relief was available under § 502(a)(3) in that case because the plaintiffs were not able to proceed under any other subsection of § 502. The plaintiffs had to "rely on the third subsection or they [would] have [had] no remedy at all." Id.; see also Ream v. Frey, 107 F.3d 147, 152-53 (3d Cir. 1997) (advising courts to use a cautious approach when considering granting "appropriate equitable relief" under § 502(a)(3) and concluding that the district court appropriately granted such relief in that case because "Ream, like the plaintiffs in Varity, ha[d] no alternative means of recovering for his losses").

In this case, by contrast, plaintiffs have available a remedy other than that provided by § 502(a)(3), and they have sought such relief--a declaratory judgment under § 502(a)(1)(B) (Count III, which is not here contested), recognizing plaintiffs' right to collect severance and other benefits under the terms of the CoreStates employee benefit plans. See Complaint ¶¶ 75-76; Prayer For Relief, at B, C. Indeed, plaintiffs' misinterpretation claim amounts to no more than a claim that CoreStates wrongfully

denied them benefits under the terms of the plans.[6] Because plaintiffs have available a sufficient equitable remedy under § 502(a)(1)(B), the court will grant defendants' motion to dismiss plaintiff's misinterpretation claim. See Kuestner v. Health and Welfare Fund & Pension Fund of the Philadelphia Bakery Employers and Food Driver Salesmen's Union, 972 F. Supp. 905, 910-11 (E.D. Pa. 1997) (granting defendants' motion to dismiss plaintiff's § 502(a)(3) claim because plaintiff had available equitable relief under § 502(a)(1)(B)); Smith v. Prudential Health Care Plan, Inc., 1997 WL 746045, at *2 (E.D. Pa. Nov. 26, 1997) (dismissing plaintiff's claim under § 502(a)(3) because plaintiff had a "cognizable claim for benefits based upon another section of ERISA [i.e. § 502(a)(1)(B)] . . .").

2. Fiduciary Misrepresentation

In their memorandum of law in opposition to defendants' motion to dismiss, plaintiffs argue that Count II states a claim for fiduciary misrepresentation. See Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Dismiss and to Stay Count III ("Pl's Mem.") at 12-13. Plaintiffs point out that in the "Facts" section of their complaint, they allege that CoreStates made a variety of misrepresentations to employees in the Systems and Technology Group. Specifically, plaintiffs allege that in March 1997, Larsen and Greco promised that: "[P]eople whose jobs are affected [by the CoreStates-Andersen alliance] will receive benefits according to the CoreStates severance policy." Complaint ¶ 30. In addition, plaintiffs allege that Ricci sent out e-

[6] The court notes that the amendment to the severance plan is not actionable as a violation of § 510. See Discussion, supra Part III.A.1.

mails via the company's internal e-mail system, in which she represented that the online policy was the applicable policy. See id. ¶ 40. Plaintiffs allege that at the same time that Ricci made these representations, CoreStates amended its severance plan to limit eligibility for severance benefits, but did not give notice to CoreStates' employees that it was doing so. See id. ¶ 43-44. Plaintiffs contend that they incorporated these factual allegations into Count II through ¶ 73 ("By committing the foregoing acts . . . .").

Defendants argue that Count II "makes absolutely no mention" of a fiduciary misrepresentation claim. See Defs' Reply Mem. at 8. Even if the court could construe Count II as asserting such a claim, defendants argue, the court should dismiss Feret's and Leyderman's claims because they have failed to include any allegations that defendants' misrepresentations caused them any harm. See id. at 10. Defendants also argue that, at a minimum, plaintiffs should be ordered to amend their complaint to incorporate the allegations made in Cloud's affidavit, which plaintiffs have attached to their memorandum of law. See id. at 9 n.9.

The court accepts plaintiffs' argument that ¶ 73 incorporates their earlier factual allegations concerning defendants' alleged fiduciary misrepresentations. However, the court nonetheless concludes that Count II fails to state a claim for fiduciary misrepresentation because plaintiffs make no allegations as to any causal link between defendants' alleged breach of duty and plaintiffs' alleged harm. See In re Unisys Corp. Retiree Medical Benefit "ERISA" Litig., 57 F.3d 1255, 1267 (3d Cir. 1995), cert. denied, --- U.S. --- (1996) ("In Bixler v. Central Pa. Teamsters Health-Welfare Fund . . . , we held that where a fiduciary breach causes harm to a beneficiary, that beneficiary has a claim for equitable relief pursuant to section 502(a)(3) of ERISA . . . ." (emphasis

added)); In re Unisys Savings Plan Litig., No. 91-3067, 1997 WL 732473, at *28 (E.D. Pa. Nov. 24, 1997) ("Before liability for fiduciary breach may attach, a plaintiff must show that the fiduciaries' actions caused a loss."). Because plaintiffs have failed to state facts in support of their claim that would entitle them to relief (i.e. have failed to make any allegations as to causation and harm), the court will grant defendants' motion to dismiss this claim. However, as it appears from plaintiffs' memorandum of law that plaintiffs may be able to allege facts in support of this claim that would entitle them to relief, see Pls' Mem. at 13; Exhibit C to Pls' Mem., ¶ 5, the court will grant defendants' motion to dismiss plaintiffs' misrepresentation claim without prejudice.

C. Count III

Count III states a claim on behalf of the entire employee class against the plans for failure to provide benefits in violation of § 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). See Complaint ¶¶ 75-76. This section provides that a plaintiff may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Plaintiffs allege that "[b]y committing the foregoing acts, including without limitation, failing to provide the employee class members with severance benefits and with the benefits to which they were entitled as CoreStates employees under defendant CoreStates' employee pension and welfare benefit plans, defendant plans violated ERISA § 502(a)(1)(B) . . . ." Complaint ¶ 76.

Defendants argue that Count III should be stayed pending the exhaustion of plaintiffs' administrative remedies. See Defs' Mem. at 16. As a general rule, a federal

court will not entertain an ERISA claim unless the plaintiff first has exhausted his administrative remedies. See, e.g., Weldon v. Kraft, 896 F.2d 793, 800 (3d Cir.1990). As plaintiffs have now exhausted their administrative remedies, the court will deny defendants' motion to stay Count III.

D. Count IV

Count IV asserts a claim against CoreStates on behalf of employee class members who were rehired into non-employee positions for violation of the Pennsylvania Wage Payment and Collection Law ("WPCL"). See Complaint ¶¶ 77-78. Plaintiffs allege that "[b]y re-hiring employees to nominally non-employee positions (which were actually employee positions), defendant CoreStates wrongfully denied those employees the benefits available to other employees and thereby violated the WPCL . . . ." Id. ¶ 78.

The WPCL does not itself create a right to compensation. Rather, it gives "additional protections to employe[e]s by providing statutory remedies for the employer's breach of its contractual obligation to pay wages." Sendi v. NCR Comten, Inc., 619 F. Supp. 1577, 1579 (E.D. Pa. 1985) (internal quotations omitted); see also Oberneder v. Link Computer Corp., 674 A.2d 720, 721 (Pa. Super. Ct. 1996) ("Pennsylvania enacted the WPCL to provide a vehicle for employees to enforce payment of their wages and compensation withheld by their employers."); Fetter v. Reading Energy Holdings, Inc., No. 91-5060, 1991 WL 354880, at *4 (Pa. Commw. Ct. Jan. 8, 1991) (citing Sendi for the proposition that the WPCL does not itself create a right to compensation). Section 260.3(a) of the WPCL provides: "Every employer shall

pay all wages, other than fringe benefits and wage supplements, due to his employees on regular paydays designated in advance by the employer . . . ." 43 PA. STAT. ANN. § 260.3(a). Section 260.3(b) provides that "[e]very employer who . . . agrees to pay or provide fringe benefits or wage supplements, must remit the deductions or pay or provide the fringe benefits or wage supplements . . . within 10 days after such payments are required to be made directly to the employee . . . ." Id. § 260.3(b). The WPCL defines "wages" and "fringe benefits" broadly. "Wages" include "all earnings of an employee . . . [and] also . . . fringe benefits or wage supplements whether payable by the employer from his funds or from amounts withheld from the employees' pay by the employer." Id. § 460.2a. "Fringe benefits" include "all monetary employer payments to provide benefits under any employee benefit plan, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 . . . as well as separation, vacation, holiday or guaranteed pay . . . ." Id. The WPCL imposes liquidated damages and criminal liability for failure to make such payments, see id. §§ 260.10, 260.11a, and authorizes any employee to sue to recover owed wages and benefits. See id. § 260.9a.

1. ERISA Preemption

Defendants argue that the court should dismiss Count IV because it is preempted by ERISA. See Defs' Mem. at 19-24. Plaintiffs respond that Count IV is not preempted because it relates to more than just an ERISA plan. See Pls' Mem. at 17-19. Plaintiffs point out that, in ¶ 11 of the complaint, they allege that they have lost "non-plan incidents of employment . . . including . . . wages, bonuses, stock payments,

short-term disability, personal days, vacation, holidays, jury duty, funeral leave, and tuition reimbursement, as well as each of the CoreStates Employee Programs and Services. " Complaint ¶ 11; Pls' Mem. at 17, 18 n.11.

Section 514(a) of ERISA provides that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). A state law "relates to" an ERISA plan if it has a "connection with" or makes "reference to" the plan. See Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983); Wassil v. Advanced Tech. Labs. Inc., No. 95-6777, 1996 WL 238688, at *2 (E.D. Pa. May 7, 1996). ERISA preempts state laws that are not specifically intended to affect an employer benefit plan as well as state laws that have only indirect effects upon such a plan. See Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 139 (1990). The Third Circuit has held that a claim is preempted by ERISA if: (1) the existence of an ERISA plan is critical to establish liability; and (2) the court's inquiry would be directed to the plan. See 1975 Salaried Retirement Plan v. Nobers, 968 F.2d 401, 406 (3d Cir. 1992), cert. denied, 113 S. Ct. 1066 (1993).

The court finds that plaintiffs' claims under the WPCL are preempted insofar as they seek unpaid employee benefit plan obligations, which would appear to include severance payments, stock payments,[7] and short-term disability benefits. As the Third Circuit has explained: "Insofar as the WPCL authorizes the liability of [defendants] . . . for unpaid employee benefit plan obligations, it obviously relates, refers, and pertains to

[7] Although defendants concede that the Long Term Incentive Plan does not constitute an employee benefit plan within the meaning of ERISA, see Defs' Mem. at 39 n.34, there is no evidence in the record indicating that the Employee Stock Ownership and Savings Plan is not an ERISA benefit plan.

the underlying employee benefit plans. The WPCL itself explicitly includes ERISA plans within its scope, 43 PA. STAT. ANN. § 260.2a . . . ." McMahon v. McDowell, 794 F.2d 100, 106 (3d Cir. 1986). Plaintiffs would be able to determine the amount of any recovery under the WPCL only by reference to the benefit plans and the provisions of ERISA. See id.[8]

Plaintiffs' claims under the WPCL are not preempted, however, insofar as they seek recovery for such items as wages, bonuses, and vacation pay. The existence of an ERISA plan is not critical to establish liability with respect to these claims, and the court's inquiry would not be directed to any plan. See Complaint ¶ 11 (listing CoreStates' employee benefit plans). The court will therefore deny defendants' motion to dismiss Count IV insofar as plaintiffs' seek recovery under the WPCL for such non-ERISA benefits as wages, bonuses, and vacation pay. See Bunnion, 1998 WL 32715, at *9 (denying defendants' motion to dismiss plaintiffs' WPCL claims insofar as they sought recovery for wages and non-ERISA benefits).

2. Current Employees

---

[8] The Supreme Court has held that a lump sum payment, triggered by a single event, requiring no administrative scheme, is not an employee benefit plan within the meaning of ERISA. See Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 12 (1987). Plaintiffs' claim for severance, however, arises under an existing plan that requires administrative procedures and that provides for severance payments to be made over an extended period of time. For this reason, plaintiffs' WPCL claim is preempted by ERISA insofar as it seeks severance payments. See Gursky v. General Electric Government Services, No. 90-3016, 1990 WL 98996, at *3 (E.D. Pa. July 13, 1990) (holding that ERISA preempts plaintiff's WPCL claims for severance benefits because these claims "arise under an existing plan which provides for benefit payments to be made over an extended period of time").

Defendants argue that, to the extent that plaintiffs claims in Count IV are not preempted by ERISA, they should be dismissed because the WPCL provides relief only for current employees and plaintiffs are no longer employed by CoreStates. Defendants contend that plaintiffs "have no right to benefits earned by other CoreStates employees after [plaintiffs] accepted employment with Andersen, and nothing in the WPCL creates such a right." Defs' Mem. at 23. Plaintiffs respond that they may state a claim under the WPCL because they have alleged that they are "employees in fact of CoreStates" and the question of "[w]hether plaintiffs and the members of the class are employees of CoreStates under the common law is a question to be decided after the evidence is presented . . . and not on a motion to dismiss." Pls' Mem. at 18-19.

The WPCL applies to "wages or compensation . . . that have already been earned by [a] separated employee." Allende v. Winter Fruit Distrib., Inc., 709 F. Supp. 597, 599 (E.D. Pa. 1989). The WPCL does not define the term "employee." See 43 PA. STAT. ANN. § 260.2a. Plaintiffs have alleged that, although they have technically gone to work for Andersen, they are in reality employees of CoreStates. See Complaint ¶¶ 4, 7, 10, 30. If plaintiffs are able to prove this contention, they could be classified as CoreStates employees. For this reason, the court holds that plaintiffs have stated a claim under the WPCL insofar as they seek non-ERISA benefits such as wages, bonuses, and vacation pay. See Bunnion, 1998 WL 32715, at *9 (holding that plaintiffs who returned to work as "independent contractors" or "leased employees" after their termination stated a claim under the WPCL insofar as they sought wages and non-ERISA benefits because they were "apparently working on a regular basis . . . and could [therefore] be classified as employees"). The court will deny defendants' motion

to dismiss this claim.

E. Count V

Count V asserts a claim against all defendants for breach of contract on behalf of employee class members who were rehired into non-employee positions. See Complaint ¶¶ 79-80. Plaintiffs allege that "[b]y re-hiring employees to nominally non-employee positions (which were actually employee positions) and wrongfully denying those employees in nominally non-employee positions the benefits available to other employees of CoreStates, CoreStates and the other defendants breached the contract between CoreStates and its employees." Id. ¶ 80.

Defendants argue that Count V is preempted by ERISA. See Defs' Mem. at 24. For the reasons stated above, the court finds that Count V is preempted insofar as it seeks recovery of unpaid employee benefit plan obligations, which appear to include severance payments, stock payments, and short-term disability benefits. See Discussion, supra Part III.D; see also Pane v. RCA Corp., 868 F.2d 631, 635 (3d Cir. 1989) (affirming the district court's ruling that plaintiff's breach of contract claim was preempted by ERISA); Wassil, 1996 WL 23688, at *2 (dismissing plaintiffs' breach of contract claim because the existence of an ERISA severance plan was critical to establish defendant's liability). Count V is not preempted insofar as it seeks recovery of such items as unpaid wages, bonuses, and vacation pay because the existence of an ERISA plan is not critical to establish liability with respect to these claims, and the court's inquiry would not be directed to any plan. Therefore, the court will grant defendants' motion to dismiss Count V insofar as plaintiffs' seek recovery of unpaid

employee benefit plan obligations, such as severance payments, stock payments, and short-term disability benefits.

F. Count VI

Count VI states a claim on behalf of the entire class against CoreStates and all other fiduciaries and administrators for equitable estoppel. See Complaint ¶¶ 81-85. The Third Circuit has held that § 502(a)(3) "permits an ERISA beneficiary to recover benefits under an equitable estoppel theory, upon establishing a material representation, reasonable and detrimental reliance upon the representation, and 'extraordinary circumstances.'" Smith v. Hartford Ins. Group, 6 F.3d 131, 137 (3d Cir. 1993) (citing Gridley v. Cleveland Pneumatic Co., 924 F.2d 1310, 1319 (3d Cir. 1991)); see also Curcio v. Hancock Mutual Life Ins. Co., 33 F.3d 226 (3d Cir. 1994) ("[A]n equitable estoppel claim . . . is authorized under ERISA pursuant to § 1132(a)(3)(B) . . ."). [9]

Plaintiffs allege that the misrepresentations, "including without limitation the misrepresentations relating to the Severance Policy made by CoreStates and the other fiduciary and administrator defendants[,] were material misrepresentations," Complaint ¶ 82; that "[p]laintiffs and the members of the plaintiff class reasonably relied on [these] misrepresentations . . . and . . . were injured thereby," id. ¶ 83; and that the intentional misrepresentations, the denial of severance at the time of representations to the

[9] Section 502(a)(3) permits a beneficiary "to obtain . . . appropriate equitable relief . . . to redress [ERISA] violations or . . . to enforce any provisions of [ERISA] or the terms of the plan." 29 U.S.C. § 1132(a)(3).

contrary, and other factors all constitute extraordinary circumstances, see id. ¶ 84.

Defendants argue that plaintiffs' equitable estoppel claim should be dismissed because plaintiffs have made no factual allegations of detrimental reliance and "likely cannot make such allegations in such circumstances . . . ." Defs' Mem. at 27-28.[10] Defendants further argue that "[b]ecause the remedies sought under 502(a)(3) are precisely the same as those sought for the other alleged violations of ERISA, these estoppel claims are not 'appropriate equitable relief' and, consistent with Varity, must now be dismissed." Id. at 29.

Plaintiffs respond that their allegation of reliance in ¶ 83 of their complaint is sufficient to survive defendants' motion to dismiss. See Pl's Mem. at 21-22. Plaintiffs also note that plaintiff Cloud "sets forth in his affidavit (attached hereto as exhibit C) how plaintiffs detrimentally relied upon the representations by defendants." Id. at 22 n.13.

The court finds that plaintiffs' allegations in Count VI are sufficient to put defendants on notice of the actions upon which plaintiffs' estoppel claim is based. See Barnett v. Topps Co., Inc., No. 98-0462, 1998 WL 257859, at *2 (E.D. Pa. May 21, 1998) ("[U]nder the system of notice pleading contemplated by the Federal Rules of Civil Procedure all that is required is that a complaint give the defendant 'fair notice of what the plaintiff's claim is and the ground upon which it rests.'" (quoting Conley, 355 U.S. at 47)).

---

[10] Defendants contend that if the court considers the allegations of reliance that appear in Cloud's affidavit, it should still dismiss the estoppel claims of plaintiffs Feret and Leyderman. See Defs' Reply Mem. at 14.

The court, however, will nonetheless grant defendants' motion to dismiss because plaintiffs cannot show that equitable relief pursuant to this section is "appropriate." In Count VI, plaintiffs allege: "CoreStates and the other fiduciary and administrator defendants are estopped from denying, or interpreting the CoreStates Benefit Plans so as to deny, benefits under the CoreStates Benefits Plans to plaintiffs and the members of the plaintiff class." Complaint ¶ 85 (emphasis added). As this paragraph reveals, plaintiffs' equitable estoppel claim is really a claim for benefits under the terms of the CoreStates Benefit Plans, as pleaded in Count III. As discussed above, see Discussion, supra Part III.B.1, where Congress has provided for appropriate relief for the injury allegedly suffered by a beneficiary, further equitable relief under § 502(a)(3) should not be provided. See Varity, 116 S. Ct. at 1079; Ream, 107 F.3d at 152-53 ("[Courts] must apply ERISA § 502(a)(3)(B) cautiously when an individual plan beneficiary seeks 'appropriate equitable relief.'"). Because plaintiffs have available a remedy other than that provided by § 502(a)(3)--and have sought such relief in Count III--the court finds that equitable relief is not "appropriate" under this section.[11] For this reason, the court will grant defendants' motion to dismiss Count VI with prejudice. See Kuestner, 972 F. Supp. at 910-11 (granting defendants' motion to dismiss plaintiff's § 502(a)(3) claim because plaintiff had available equitable relief under § 502(a)(1)(B));

[11] Plaintiffs' argument that the Third Circuit "has expressly held that a defendant may be liable under alternate theories of breach of fiduciary duty and estoppel," see Pls' Mem. at 23, is of no moment here, as the court holds that equitable relief under § 502(a)(3)--under either a theory of fiduciary breach or a theory of estoppel--is not appropriate because plaintiffs have an adequate remedy under § 502(a)(1)(B). In this case, plaintiffs' claims for breach of fiduciary duty and estoppel both fail for this same reason.

Smith, 1997 WL 746045, at *2 (dismissing plaintiff's claim under § 502(a)(3) because plaintiff had a "cognizable claim for benefits based upon another section of ERISA [i.e. § 502(a)(1)(B)] . . .").

G. Count VII

In Count VII, plaintiff Joseph P. Feret states a claim on behalf of all members of the employee class who received incentive awards in 1997 against CoreStates for violations of § 10(b) of the Securities Exchange Act of 1934 ("the Act"), 15 U.S.C. § 17j,[12] and Securities Exchange Commission Rule 10b-5 ("Rule 10b-5"), 17 C.F.R. § 240.10-5. See Complaint ¶¶ 86-90.[13] Plaintiffs allege that on January 21, 1997, CoreStates granted incentive awards, including incentive stock options, to members of

---

[12] Section 10(b) provides:

> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange-- . . . (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

15 U.S.C. § 78j(b).

[13] Rule 10b-5, promulgated under § 10(b) of the Act, provides in relevant part:

> It shall be unlawful for any person . . . to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made not misleading . . . in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5 (1990).

the class pursuant to its 1992 Long-Term Incentive Plan ("LTIP").[14] See Complaint ¶ 51. Plaintiffs allege that in order for their options to have vested, they had to have remained employed at CoreStates for one year following the grant. See id. Plaintiffs allege that, on January 21, 1997, CoreStates was already planning to transfer plaintiffs to Andersen and thus had reason to know that the options granted would never vest because the employees would be terminated before the end of that year. See id. Plaintiffs allege that CoreStates never informed the affected employees that their options would never vest, but rather "conferred the options, representing that the options had value." Id.

Plaintiffs contend that these actions violate § 10(b) and Rule 10b-5 because CoreStates issued documents to them that were "materially false and misleading in that they affirmatively misrepresented CoreStates' true intentions with regard to the 1997 incentive stock options and failed to disclose material adverse information about CoreStates' practices and procedures with regard to said stock options." Id. ¶ 88. Plaintiffs further allege that "CoreStates knew or recklessly disregarded the fact that the aforesaid acts or practices, misleading statements and omissions would adversely affect the financial positions of the class." Id. ¶ 89. Last, plaintiffs allege that "[a]s a result of the dissemination of CoreStates' false and misleading information or the

---

[14] Pursuant to this plan, CoreStates has the discretion to give incentive awards in various forms, including stock options and incentive stock options, to those "officers and other key employees of the Corporation who are in positions in which their decisions, actions and counsel significantly contribute to the success of the corporation." Complaint ¶ 46. The purpose of the plan is to provide "incentives and rewards to associate more closely the interests of certain officers and key executives with the interests of CoreStates' stockholders." Id.

omissions of the same, Plaintiff Feret and others similarly situated, were induced to provide services to CoreStates for compensation, which was grossly less valuable than represented to them and were damaged thereby." Id. ¶ 90.

In order to state a claim under § 10(b) and Rule 10b-5, a private plaintiff must allege the following elements: (1) a false representation (2) of a material fact (3) rendered "in connection with" (4) the purchase or sale (5) of a security; (6) defendant's knowledge of the falsity of the representation; (7) defendant's intention that plaintiff rely on the representation; (8) plaintiff's reasonable reliance thereon; and (9) resultant loss. See Zlotnick v. TIE Communications, 836 F.2d 818, 821 (3d Cir. 1988); Ketchum v. Green, 557 F.2d 1022 (3d Cir.), cert. denied, 434 U.S. 940 (1977).

Defendants argue that Count VII should be dismissed for four reasons: (1) the LTIP does not constitute a "security" within the meaning of the Act; (2) plaintiffs did not make a "purchase or sale;" (3) the statements at issue in the complaint are immaterial as a matter of law; and (4) plaintiffs cannot show that their reliance on defendants' alleged misrepresentations and omissions was reasonable. See Defs' Mem. at 29-30. The court will consider each of these claims in turn.

1. Does the LTIP Constitute a "Security" Within the Meaning the Act?

Defendants argue that plaintiffs' characterization of the LTIP as a "security" is precluded by the plain meaning of the Act. They point out that, although the Act defines the term "security" in great detail and gives "myriad examples of the types of things that constitute securities, the definition does not refer to employee incentive

plans." Defs' Mem. at 32.[15] Defendants also cite International Brotherhood of Teamsters v. Daniel, 439 U.S. 551 (1979), for the proposition that plaintiffs' interests in the LTIP do not constitute securities within the meaning of the Act. See id. at 32-33.

In Daniel, the Supreme Court held that an employee's participation in a noncontributory, compulsory pension plan does not constitute a "security"--and more specifically, an "investment contract"--within the meaning of § 2(1). See Daniel, 439 U.S. at 559. In determining that an employee's interest in such a pension plan cannot be considered an "investment contract," the Court found that such a plan does not require the employee "to give up a specific consideration in return for a separable financial interest with the characteristics of a security." Daniel, 439 U.S. at 559. The Court explained:

> In a pension plan such as this one . . . the purported investment is a relatively insignificant part of an employee's total and indivisible compensation package. No portion of an employee's compensation other than the potential pension benefits has any of the characteristics of a security, yet these noninvestment interests cannot be segregated from the possible pension benefits. Only in the most abstract sense may it be said that an employee "exchanges" some portion of his labor in return for these possible benefits. He surrenders his labor as a whole, and in return receives a compensation package that is substantially devoid of aspects resembling a security. His

---

[15] Section 2(1) of the Securities Act defines a "security" as:

> [A]ny note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, factional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a 'security,' or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

15 U.S.C. § 78c(a)(10).

> decision to accept and retain covered employment may have only an attenuated relationship, if any, to perceived investment possibilities of a future pension. Looking at the economic realities, it seems clear that an employee is selling his labor primarily to obtain a livelihood, not making an investment.

Id. at 560 (footnote omitted).

The Court also found that in the case of a noncontributory, compulsory pension fund, a far larger portion of income comes from employer contributions than from the fund's successful management and investment of its assets. See id. at 561-62. Last, the Court noted that the existence of ERISA "severely undercuts all arguments for extending the Securities Acts to non-contributory, compulsory pension plans." Id. at 569-70. The court explained that "Congress believed that it was filling a regulatory void when it enacted ERISA, a belief which the SEC actively encouraged" and that, in light of ERISA, the lower court's extension of the Securities Acts to cover the plaintiffs' interests in the pension plan "serve[d] no general purpose." Id. at 570.

The Court's holding in Daniel, however, is limited to non-contributory, compulsory pension plans. A number of courts in this and other circuits have distinguished such plans from employee stock option plans, and have held that the latter constitute "securities." In Tafuri v. Air Products and Chemicals, Inc., 1997 WL 643598, at *2 (E.D. Pa. Oct. 8, 1997), for example, the court denied the defendants' motion to dismiss the plaintiffs' claims under § 10(b) and Rule 10b-5, where the plaintiffs alleged that defendants deliberately misrepresented that they would transfer stock in accordance with stock options granted to the plaintiffs during their employment. The court explained that at that stage of the litigation, it could not "find that the stock options plan [did] not . . . qualify as a purchase of securities." Id.; see also Yoder v. Orthomolecular

Nutrition Institute, 751 F.2d 555, 556 (2d Cir. 1985) (holding that a complaint "alleging that a company knowingly misrepresented its financial condition when it undertook to issue its stock to a person, who, in reliance thereon, became an employee" stated a claim under the federal securities laws); Dubin v. E.F. Hutton Group, Inc., 695 F. Supp. 138, 144-47 (S.D.N.Y. 1988) (denying defendants' motion to dismiss plaintiffs' claims under § 10(b) and Rule 10b-5 because plaintiffs' interests in their employer's Equity Ownership Plan constituted "securities" within the meaning of the Act); Foltz v. U.S. News & World Report, Inc., 627 F. Supp. 1143, 1159 (D.D.C. 1986) (holding that where an employee stock plan is not covered by ERISA, "extension to it of coverage under the securities laws would do violence to no Congressional purpose").

The court agrees with plaintiffs that their interests in the LTIP are very different from the plaintiffs' interests in the pension plan at issue in Daniel. Unlike the pension plan in Daniel, but like the equity ownership plan at issue in Dubin, participation in the LTIP is not compulsory. Officers and other "key employees" are "eligible to participate" in the plan, but such participation is by no means mandatory or guaranteed. See Complaint ¶¶ 46-47; Exhibit C to Defs' Motion ¶ 5. Nor can the LTIP be characterized as wholly "non-contributory." Because any interest in the plan has to be recommended by a CoreStates committee, see Exhibit C to Defs' Motion ¶ 3, an executive would expect to make some contribution to the company in return for the stock options. See Dubin, 695 F. Supp. at 145. In fact, the LTIP specifically states that "[p]ersons eligible to participate shall be limited to those officers and other key employees of the Corporation who are in positions in which their decisions, actions and counsel significantly contribute to the success of the Corporation." Exh. C to Defs' Mem., ¶ 5

(emphasis added).

Moreover, unlike the pension plan in Daniel, the LTIP gives its participants the characteristics of investors. The plan itself is designed to "[provide] incentives and rewards to associate more closely the interests of certain officers and key executives with the interests of CoreStates' stockholders." Exhibit C to Defs' Motion ¶ 1. Last, as defendants acknowledge, unlike the pension plan at issue in Daniel, the LTIP is not governed by ERISA. See Defs' Mem. at 39 n.34. If the court refused to extend the securities laws to cover plaintiffs' interests in the LTIP, it would "do violence to no Congressional purpose." Foltz, 627 F. Supp. at 1159.

For all of these reasons, the court finds that, at this stage of the litigation, it cannot conclude that plaintiffs' interests in the LTIP do not constitute "securities" within the meaning of the Act.

2. Was there a "Purchase or Sale"?

Defendants argue that plaintiffs lack standing to state a claim under the Act because they neither "purchased" nor "sold" a security. According to defendants, "[b]ecause the stock options were granted to the employees, the plaintiffs did not make 'direct payments' to secure the options, and therefore, there has been no purchase or sale." Defs' Mem. at 34-35.

The court notes that only a purchaser or seller of securities may bring a claim under § 10(b) or Rule 10b-5. See Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975). However, an agreement exchanging a plaintiff's services in return for stock options constitutes a "sale" within the meaning of the Act. See Yoder, 751 F.2d at 559

(holding that an employment agreement between a plaintiff employee and a defendant corporation that contains stock options constitutes a sale under Rule 10b-5); Campbell v. National Media Corp., 1994 WL 612807, at *3 (E.D. Nov. 3, 1994); Rudinger v. Insurance Data Processing, Inc., 778 F. Supp. 1334, 1338-39 (E.D. Pa. 1991) ("An agreement exchanging a plaintiff's services for a defendant corporation's stock constitutes a 'sale' under the terms of the Securities Exchange Act."); Sanzone v. Phoenix Technologies, 1990 WL 50732, at *14 (E.D. Pa. Apr. 19, 1990) (same). For this reason, defendants' second argument is without merit.

3. Are the Statements Actionable?

a. The Materiality Requirement

Defendants argue that the statements alleged in plaintiffs' complaint are not actionable under the federal securities laws because they have "nothing whatsoever to do with the financial well-being of the company or the investment merit of CoreStates' securities" and are of "no interest whatsoever to the stock-purchasing public." Defs' Mem. at 36. Defendants argue that the statements alleged in plaintiffs' complaint are therefore immaterial as a matter of law. See id. at 37.

A fact is "material" if there is a substantial likelihood that, under all the circumstances, it would assume "actual significance in the deliberations of the reasonable shareholder." TSC Industries, Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976); Basic Inc. v. Levinson, 108 S. Ct. 973, 983 (1988) (expressly adopting TSC Industries' materiality standard for use in § 10(b) and Rule 10b-5 cases). Omitted information is material if there is a "substantial likelihood that the disclosure of [this

information] . . . would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'" Basic, 108 S. Ct. at 983 (quoting TSC Industries, 426 U.S. at 449); Lewis v. Chrysler Corp., 949 F.2d 644, 649 (3d Cir. 1991). Although materiality is a mixed question of law and fact ordinarily left to the trier of fact, "if the alleged misrepresentations or omissions are so obviously unimportant to an investor that reasonable minds cannot differ on the question of materiality [it is] appropriate for the district court to rule that the allegations are inactionable as a matter of law." In re Numerex Corp. Sec. Litig., 813 F. Supp. 391, 397 (E.D. Pa. 1996) (quotation omitted).

Viewing plaintiffs' allegations in the light most favorable to them, the court cannot conclude that defendants' misrepresentations and omissions were immaterial as a matter of law. Plaintiffs have alleged that CoreStates' failure to disclose that they would be terminated before their options could vest was a material omission. See Complaint ¶ 51. The court cannot conclude that this information is "obviously unimportant" or that it would not have significantly altered the "total mix" of information available to a reasonable investor.

b. The "Bespeaks Caution" Doctrine

Defendants further argue that the "bespeaks caution" doctrine renders any alleged misrepresentations or omissions immaterial as a matter of law. See Defs' Mem. at 20. This argument is inapposite because the "bespeaks caution" doctrine applies only to misrepresentations and omissions regarding future projections and forecasts, and not to misrepresentations and omissions regarding presently known information. In

In re Donald J. Trump Casino Secs. Litig., 7 F.3d 357 (3d Cir. 1993), the Third Circuit explained:

> [W]hen an offering document's forecasts, opinion or projections are accompanied by meaningful cautionary statements, the forward-looking statements will not form the basis for a securities fraud claim if those statements did not affect the "total mix" of information the document provided investors. In other words, cautionary language, if sufficient, renders the alleged omissions or misrepresentations immaterial as a matter of law.

Id. at 371-72 (emphasis added). The court also noted that the "cautionary statements must be substantive and tailored to the specific future projections, estimates or opinions . . . which the plaintiffs challenge." Id.

The "bespeaks doctrine" is not applicable in this case because plaintiffs have not alleged that CoreStates made any statements or omissions of forecasts, estimates, opinions, or projections. Rather, they have alleged that, when CoreStates granted them the options in January 1997, it knew that the options would never vest and failed to disclose this information: "[O]n January 21, 1997, CoreStates already was planning for the transfer of the work of the class members. Thus, CoreStates had reason to know that the options granted would never vest because the affected employees would be terminated before the year ended, but CoreStates never informed the affected employees . . . ." Complaint ¶ 51 (emphasis added). Because plaintiffs have identified misrepresentations and omissions concerning presently known facts, defendants may not invoke the "bespeaks caution" doctrine. See In re Westinghouse Sec. Litig., 90 F.3d 696, 709 (3d Cir. 1996) ("[D]efendants' cautionary statements about the future did not render those misrepresentations [of known losses and known risks] immaterial . . . ."); Voit v. Wonderware Corp., 977 F. Supp. 363, 371-72 (E.D. Pa. 1997) (denying

defendants' motion to dismiss plaintiff's § 10(b) claim because plaintiff alleged that defendants made omissions of presently known facts and the "bespeaks caution" doctrine does not apply to such facts); In re Prudential Secs. Inc. Ltd. Partnerships Litig., 930 F. Supp. 68, 72 (S.D. N.Y. 1996) (finding that defendants' caution that certain assets "could decline" was insufficiently cautionary when plaintiffs alleged that defendants knew those assets "would decline"); cf. Trump, 7 F.3d at 371-77 (applying the "bespeaks caution" doctrine to defendants' failure to disclose their forecast that the Trump Casino would require a daily win of $1.3 million to repay its debts and defendants' failure to disclose their belief that it would be difficult for the casino to attract customers away from other casinos in Atlantic City).

4. Was there Reasonable Reliance?

Defendants argue that plaintiffs cannot show reasonable detrimental reliance because the LTIP contained provisions specifically stating that the LTIP would not alter their at-will employment status and that they could lose their jobs before their options vested. See Defs' Mem. at 40.[16]

[16] Defendants characterize their fourth objection as an objection that "no false or misleading statements or omissions existed." Defs' Mem. at 37. However, defendants proceed to argue that plaintiffs cannot show reasonable reliance. See id. ("Finally, because, as is explained below at 39-40 [arguing that plaintiffs cannot show reasonable reliance in order to state a claim for fraud or negligent misrepresentation], the alleged statements . . . were not false or misleading, Count VII of the Complaint should be dismissed with prejudice."). Insofar as defendants contend that the statements were not false or misleading, the court rejects this argument as inappropriate at this stage of the litigation. Plaintiffs have alleged that certain statements and omissions were misleading. See Complaint ¶ 51. Plaintiffs have thus satisfied their burden of alleging facts which, if proved true, would entitle them to relief. See Conley, 355 U.S. at 45.

The court finds that this objection is inappropriate at this stage of the litigation. Plaintiffs have alleged that they reasonably relied on defendants' alleged misrepresentations and omissions. See Complaint ¶ 90 ("As a result of the dissemination of CoreStates' false and misleading information or the omissions of the same, Plaintiff Feret and others similarly situated were induced to provide services to CoreStates for compensation, which was grossly less valuable than represented to them and were damaged thereby."). This allegation is sufficient to withstand defendants' motion to dismiss. Cf. Mullen v. New Jersey Steel Corp., 733 F. Supp. 1534, 1554 (D. N.J. 1990) (granting defendants' summary judgment motion because there were no genuine issues of material fact as to the existence of a false representation and as to reasonable reliance by plaintiff).

For all of the above reasons, the court will deny defendants' motion to dismiss Count VII.

H. Count VIII

In Count VIII, plaintiff Feret states a claim on behalf of all members of the employee class who received incentive awards in 1997 against CoreStates for violation of § 1-401 of the Pennsylvania Securities Act, 70 PA. STAT. ANN. § 1-401. See Complaint ¶¶ 91-95.[17] Plaintiffs allege that they are entitled to damages under § 1-

[17] Section 401 of the Pennsylvania Securities Act is modeled after Rule 10b-5 of the federal securities laws. See Bull v. American Bank and Trust Co. of Pennsylvania, 641 F. Supp. 62, 66 (E.D. Pa. 1986). Like Rule 10b-5, this section prohibits fraud in connection with the offer, sale, or purchase of any security. See 70 PA. STAT. ANN. § 1-401. It requires similar elements of proof as § 10(b) and Rule 10b-5. See Goodman v. Moyer, 523 F. Supp. 35, 39 (E.D. Pa. 1981) ("In light of the similarity of the language

501(a) of the act. See id. ¶ 95.

Defendants argue that plaintiffs' claims in this count should be dismissed for the same reasons that plaintiffs' claims under the federal securities laws should be dismissed. See Defs' Mem. at 37. As the court has concluded that these arguments are without merit, see Discussion, supra Part III.G, it will deny defendants' motion to dismiss Count VIII.

I. Counts IX and X

Count IX states a claim on behalf of the entire employee class against CoreStates and all other fiduciaries and administrators for fraud.[18] Count X states a claim on behalf of the entire employee class against CoreStates and all other fiduciaries and administrators for negligent misrepresentation.[19]

---

used, and the similar policy carried out through Rule 10b-5 and sections 1-401 and 1-501 of the Pennsylvania Securities Act, the Court must conclude that Pennsylvania courts would require similar elements of proof in actions brought under those sections of the Pennsylvania Securities Act.").

[18] An action for fraud includes the following elements:

> (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance.

Heffler v. Joe Bells Auto Serv., 946 F. Supp. 348, 353 (E.D. Pa. 1996).

[19] The elements of the tort of negligent misrepresentation include:

> (1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting

in justifiable reliance on the misrepresentation. Gibbs v. Ernst, 647 A.2d 882, 890 (Pa. 1994).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOSEPH P. FERET, JAMES CLOUD, IRINA LEYDERMAN, on Behalf of Themselves and All Similarly Situated Persons, Plaintiffs,	:	CIVIL ACTION
v.	:	
CORESTATES FINANCIAL CORP., Its Employee Pension and Welfare Benefit Plans, and the Fiduciaries and Administrators of Each, Defendants.	:	No. 97-6759

ORDER

AND NOW, this day of July, 1998, upon consideration of defendants' motion to dismiss and to stay Count III, plaintiffs' response, and defendants' reply thereto, IT IS HEREBY ORDERED THAT defendants' motion is GRANTED IN PART AND DENIED IN PART. Specifically:

1. Defendants' motion to dismiss is GRANTED with respect to plaintiffs' claim, in Count I, that CoreStates violated § 510 of ERISA by amending its severance plan.
2. Defendants' motion to dismiss is GRANTED with respect to plaintiffs' claim, in Count I, that CoreStates violated § 510 of ERISA by rehiring plaintiffs into non-benefit positions.
3. Defendants' motion to dismiss is GRANTED with respect to plaintiffs'

Defendants argue that Counts IX and X should be dismissed because plaintiffs cannot show reasonable detrimental reliance on defendants' alleged misrepresentations. See Defs' Mem. at 38. As discussed above, the court finds that this objection is inappropriate at this stage of the litigation. See Discussion, supra Part III.G.4. For this reason, the court will deny defendants' motion to dismiss Counts IX and

---

misinterpretation claim in Count II.

4. Defendants' motion to dismiss is GRANTED with respect to plaintiffs' fiduciary misrepresentation claim in Count II. This claim is DISMISSED WITHOUT PREJUDICE to the right of plaintiffs to file an amended complaint within 10 days of the date hereof.

5. Defendants motion to stay Count III is DENIED.

6. Defendants' motion to dismiss is GRANTED with respect to all claims in Counts IV and V insofar as these claims relate to employee benefit plans governed by ERISA.

7. Defendants' motion to dismiss is GRANTED with respect to all claims in Count VI.

8. Defendants' motion to dismiss is DENIED with respect to all claims in Counts VII, VIII, IX, and X.

_____

William H. Yohn, Jr., Judge

X.

An appropriate order follows.